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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,507	03/08/2002	Peter J. Brickfield	07500001AA	3726
7590	09/22/2005		EXAMINER	
McGuire Woods LLP			JARRETT, RYAN A	
Suite 1800			ART. UNIT	PAPER NUMBER
1750 Tysons Blvd.				2125
McLean, VA 22102				

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/092,507	BRICKFIELD ET AL.	
Examiner	Art Unit		
Ryan A. Jarrett	2125		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 25 July 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 16-37,94-99,113 and 114 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) \_\_\_\_\_ is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) 16-37,94-99,113 and 114 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date .

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 16-37, 113 drawn to a method for minimizing and/or eliminating need for human operator attention in energy management of a building system, classified in class 700, subclass 295.
  - II. Claims 94-95 and 114, drawn to a compilation of energy-relevant data, classified in class 700, subclass 286.
  - III. Claims 96-97, drawn to a data analysis method, classified in class 700, subclass 291.
  - IV. Claims 98-99, drawn to a method of determining whether to repair or replace an individual energy user including a plurality of components, classified in class 700, subclass 292.
2. The inventions are distinct, each from the other because of the following reasons:  
Inventions I-IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable.  
In the instant case, Invention I has separate utility such as in a method that automatically determines whether at least one energy-relevant event is present and processes at least one curtailment possibility to be generated by an energy user based on rules. None of the other groups contain this feature, so the subcombination of Group II is separately usable.

Invention II has separate utility such as in an electronic stream of energy, control and equipment status data that includes a data field to indicate an energy efficiency of an energy user based on pre-set rules and at least one data field indicating one or more of a (a) a physical property of air; (b) a physical property of light; (c) motion sensed by motion detectors and (d) chemical or biological warfare agent detection. None of the other groups contain this feature, so the subcombination of Group II is separately usable.

Invention III has separate utility such as in a method that uses a rules based, computer based, intelligent agent to make a comparison against historic data for a device associated with an energy user, further including computer based searching for rapid deviation from a historic pattern. None of the other groups contain this feature, so the subcombination of Group III is separately usable.

Invention IV has separate utility such as in a method that replaces or repairs at least one of the components of an individual energy user when deemed inefficient by a rules and goal based computerized intelligent agent. None of the other groups contain this feature, so the subcombination of Group IV is separately usable. See MPEP § 806.05(d).

3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Groups II-IV, and likewise for the other groups, restriction for examination purposes as indicated is proper.

4. A telephone call was made to Charles Gross on 9/15/05 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement may be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan A. Jarrett whose telephone number is (571) 272-3742. The examiner can normally be reached on 10:00-6:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2125

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ryan A. Jarrett  
Examiner  
Art Unit 2125

9/15/05  
RAJ



LEO PICARD  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100